IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5107 of 2003
Date of decision : 8.12.2006.

Swaran Singh

.....Petitioner.

Versus

M/s Kismet Entertainments Private Ltd.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Sunil Chadha, Advocate
for the petitioner.

Mr. Anil Malhotra, Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

By way of present revision petition the petitioner has challenged the order dated 9.8.2003 passed by the learned Civil Judge (Jr. Divn.), Ludhiana striking out the defence of the petitioner for not filing the written statement and also for non-payment of costs.

The petitioner has also challenged the order dated 16.8.2003 vide which injunction was granted in favour of the plaintiff respondent, keeping in view the fact that petitioner had failed to file the written statement and his defence was struck off.

The learned counsel for the petitioner on 6.11.2003 had taken a stand that in the impugned order dated 9.8.2003 it was wrongly mentioned that the counsel for the parties were present. It was also stated that counsel for the petitioner defendant was not present as he was not aware of certain

dates fixed by the trial Court. In para 5 of the grounds of revision the petitioner had taken a stand that written statement dated 1.5.2003, copy of which was attached as Annexure P3 was lying prepared in the brief of the counsel of the petitioner but the same could not be filed on 14.5.2003 and 14.6.2003 as the same was not signed by the petitioner by the said two dates. It was further mentioned that Clerk of the petitioner noted the next date of hearing in the suit as 17.7.2003. The statement of the learned counsel for the petitioner was that as per the brief of the counsel representing the petitioner before the learned trial Court, the date noted was 17.7.2003 and the said date the case was said to have been adjourned to 9.9.2003. It was further claimed that on 9.9.2003 the counsel for the petitioner made an inquiry and came to know of the order dated 9.8.2003 as well as the order dated 16.8.2003. The learned counsel for the petitioner further stated on the said date that in the interim orders dated 8.8.2003, 9.8.2003, 14.8.2003 and 16.8.2003 his presence has been marked whereas the counsel was not having the knowledge about the listing of the case on the said date nor he was actually present in the said case on these dates. In support of this statement he had placed reliance on the brief of the counsel which was attached as Annexure P4. In view of the stand taken by the petitioner this Court was pleased to call for report from the learned Trial Court on the contentions referred to above.

In pursuance to the orders passed by this Court, the learned Civil Judge (Jr.Divn.), Ludhiana vide his letter No. 696 dated 6.5.2004 had reported that the Peshi register as well as cause lists of the Court showed that the case was fixed on the dates referred to in the order and the averments made in para 5 of the revision petition was not correct. In view of

the report of the learned Civil Judge (Jr. Divn.), Ludhiana Mr. Sunil Chadha, learned counsel for the petitioner contended that in para 6 of the revision petition it clearly stated that the lapse of his counsel on account of facts and circumstances of the present case had occurred inadvertently and on account of noting of incorrect dates and, therefore, prayed that in the interest of justice the petitioner should be given an opportunity to pay the costs as well as file the written statement as the procedural law should be used for advancement of justice and not throttling the same. However, keeping in view the fact that the petitioner has taken a stand that the absence of the counsel was inadvertent due to noting of the wrong dates. I feel that interest of justice would be served if the impugned order dated 9.8.2003 is set aside and the petitioner is granted liberty to move appropriate application before the trial Court seeking permission to file the written statement and thereafter proceed with the matter.

Accordingly, liberty is granted to the petitioner to approach the learned trial Court for moving appropriate application in this regard. The learned trial Court is directed to pass order on the said application in accordance with law. The learned trial Court would be at liberty to impose further costs in addition to cost already imposed, in case the application moved by the petitioner is accepted.

Revision disposed of.

8.12.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**